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**BEFORE THE
CALIFORNIA BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	Case No. 1B-95-52549
Against:)	
)	
DOROTHY E. BAUER, D.P.M.)	A C C U S A T I O N
4843 Arlington Ave.)	
Riverside, CA 92504)	
)	
Podiatric Medicine)	
Certificate No. E 3071,)	
)	
Respondent.)	

Complainant James E. Rathlesberger, as cause for
disciplinary action alleges as follows:

PARTIES

1. Complainant, James E. Rathlesberger, is the
Executive Director of the Board of Podiatric Medicine
(hereinafter the "Board") and brings this Accusation solely in
his official capacity.

2. On or about December 10, 1982, Podiatric Medicine
Certificate No. E 3071 was issued by the Board to Dorothy E.
Bauer, D.P.M. (hereinafter "respondent"), and at all times

1 relevant to the charges brought herein, this license has been in
2 full force and effect. Unless renewed, it will expire on March
3 31, 1998.

4 JURISDICTION

5 3. This accusation is brought before the Board under
6 the authority of the following sections of the California
7 Business and Professions Code (hereinafter "Code"):

8 A. Section 2222 of the Code provides that the
9 California Board of Podiatric Medicine shall enforce and
10 administer Article 12 (Enforcement) of Chapter 5 of the
11 Medical Practice Act as to doctors of podiatric medicine.
12 Any acts of unprofessional conduct or other violations
13 proscribed by Chapter 5 are applicable to licensed doctors
14 of podiatric medicine.

15 The California Board of Podiatric Medicine may
16 order the revocation, suspension, or other restriction of,
17 or the modification of that penalty, and the reinstatement
18 of any certificate of a doctor of podiatric medicine within
19 its authority as granted by Chapter 5 and in conjunction
20 with the administrative hearing procedures established
21 pursuant to Sections 11371, 11372, 11373, and 11529 of the
22 Government Code. For these purposes, the California Board
23 of Podiatric Medicine shall exercise the powers granted and
24 be governed by the procedures set forth in Chapter 5.

25 B. Section 2947(a) of the Code provides that the
26 Board may order the revocation of, or the imposition of
27 probationary conditions upon, a certificate to practice

1 podiatric medicine for any of the causes set forth in
2 Article 12 of the Code (commencing with Section 2220) in
3 accordance with Section 2222.

4 C. Section 2227(a) of the Code provides that the
5 Board may revoke, suspend for a period not to exceed one
6 year, or place on probation and order the payment of
7 probation monitoring costs, the license of any licensee who
8 has been found guilty under the Medical Practice Act.

9 D. Section 2234 of the Code provides, in part,
10 that unprofessional conduct includes, but is not limited to,
11 the following:

12 ". . . .

13 "(b) Gross negligence.

14 "(c) Repeated negligent acts.

15 "(d) Incompetence.

16 "(e) The commission of any act involving dishonesty or
17 corruption which is substantially related to the
18 qualifications, functions, or duties of a physician and
19 surgeon.

20 ". . . ."

21 E. Section 2261 of the Code provides that
22 knowingly making or signing any certificate or other
23 document directly or indirectly related to the practice of
24 medicine or podiatry which falsely represents the existence
25 or nonexistence of a state of facts, constitutes
26 unprofessional conduct.

27 ///

1 G. Section 810(a) of the Code provides that it
2 shall constitute unprofessional conduct and grounds for
3 disciplinary action, including suspension or revocation of a
4 license or certificate, for a health care professional to do
5 any of the following in connection with his professional
6 activities: (1) knowingly present or cause to be presented
7 any false or fraudulent claim for the payment of a loss
8 under a contract of insurance, or (2) knowingly prepare,
9 make, or subscribe any writing, with intent to present or
10 use the same, or to allow it to be presented or used in
11 support of any such claim.

12 F. Section 2497.5(a) of the Code provides that
13 the Board may request the administrative law judge, under
14 his or her proposed decision in resolution of a disciplinary
15 proceeding before the board, to direct any licensee found
16 guilty of unprofessional conduct to pay to the board a sum
17 not to exceed the actual and reasonable costs of the
18 investigation and prosecution of the case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Repeated Negligent Acts)

21 4. Respondent Dorothy E. Bauer, D.P.M., is subject to
22 disciplinary action on account of the following:

23 Patient Marjorie S.

24 A. On or about July 14, 1995, Marjorie S. went
25 to see respondent for the first time complaining of pain in
26 her left big toe. She had been unable to wear closed shoes
27 for two weeks, and the pain was worse when walking. No

1 record of any physical examination of Marjorie S. by
2 respondent appears in Marjorie S.' patient chart.
3 Respondent diagnosed and treated Marjorie S. for an acutely
4 infected ingrown toenail. Respondent removed part of the
5 toenail from Marjorie S.' left big toe and also used
6 chemicals on the area to prevent the ingrown part of the
7 nail from growing back.

8 B. During the visit of July 14, 1995, respondent
9 told patient Marjorie S. that respondent would accept
10 whatever Medicare paid for the procedure(s) done by
11 respondent as payment in full but asked Marjorie S. to pay
12 for the procedure, and Medicare would reimburse Marjorie S.
13 Marjorie S. gave respondent a check for \$234.54.

14 C. Patient Marjorie S. did not come in for a
15 scheduled follow-up visit on July 17, 1995, and next saw
16 respondent on July 20, 1995. Respondent checked Marjorie
17 S.' big toe, and found the infection cleared and the wound
18 was healing. This was Marjorie S.' last visit to respondent
19 for medical care.

20 D. On August 7, 1995, Marjorie S. received a
21 check from Medicare for \$143.74, reimbursing her for the
22 cost of her treatment by respondent. Accompanying the check
23 was a Medicare "Explanation of Benefits" (E.O.B.) which
24 reflected that respondent had billed Medicare for \$179.68
25 for respondent's care of Marjorie S.

26 E. Marjorie S. called respondent's office the
27 next day, on August 8, 1995, to discuss the discrepancy

1 between what Marjorie S. paid to respondent and the amount
2 billed by respondent to Medicare. She was told the office
3 would look into the matter and call her back.

4 F. On August 11, 1995, Marjorie S. had not heard
5 from respondent's office and called again. She was told
6 respondent would look into the matter and would be in touch
7 with Marjorie S.

8 G. On August 26, 1995, Marjorie S. returned from
9 a vacation and found no communication from respondent,
10 although she had asked respondent's office to leave a
11 message on her answering machine or drop her a note.
12 Marjorie S. again called respondent's office on August 29,
13 1995. The person Marjorie S. spoke with knew nothing of the
14 problem, and said she would have to ask someone to return
15 Marjorie S.' call.

16 H. On August 31, 1995, Marjorie S. had not heard
17 from respondent, so she called respondent's office again
18 twice. Marjorie S. was asked to come to respondent's office
19 and bring the Medicare E.O.B.'s on September 1, 1995.
20 Marjorie S. brought the requested documents to respondent's
21 office on September 1, 1995.

22 I. On September 7, 1995, Marjorie S. still had
23 not heard from respondent and called respondent's office,
24 leaving a message requesting that respondent return her
25 call. On September 8, 1995, Marjorie S. received a
26 telephone message from respondent, and respondent told
27 Marjorie S. to stop discussing her billing problems with the

1 office staff. Respondent said she would handle the matter
2 personally.

3 J. On September 18, 1995, Marjorie S. had not
4 heard from respondent and again called her office, leaving a
5 message for respondent to return her call.

6 K. On September 26, 1995, Marjorie S. received a
7 check from Medicare for \$38.16 with an E.O.B. which
8 reflected that respondent had billed Medicare for \$57.01 for
9 an office visit on April 11, 1995. Marjorie S. had not
10 visited respondent's office or been treated by respondent on
11 that date, as her first contact with respondent was on July
12 14, 1995. Marjorie S. returned the check to Medicare the
13 next day.

14 Patient Martha L.

15 L. On February 16, 1994, patient Martha L., who
16 at the time was 32 years old, injured her right ankle and
17 Achilles tendon. She went to Riverside Community Hospital
18 Emergency Room for initial care, and was told to follow up
19 with a private practitioner. Martha L. went to respondent's
20 office after she was unsuccessful in making an appointment
21 with an orthopedist.

22 M. Patient Martha L. visited respondent's office
23 on February 17, 1994.

24 N. Martha L. had been a patient of respondent's
25 in the past. Martha L. told respondent that Martha L. was
26 having great difficulty in walking and was in considerable
27 pain. Respondent did a physical examination of Martha L.'s

1 right ankle and Achilles tendon, and diagnosed a partial
2 tear of the Achilles tendon. Martha L. was in so much pain
3 that respondent had difficulty conducting the examination.
4 However, respondent was able to cast Martha L. for orthotics
5 during the examination.

6 O. Respondent elected not to treat Martha L. by
7 applying a series of casts to the affected area. Respondent
8 did not perform nor cause to be performed any diagnostic
9 studies such as an M.R.I. before treating Martha L.'s ankle
10 and Achilles tendon.

11 P. Respondent performed an unnecessary surgical
12 repair on Martha L.'s right Achilles tendon on February 18,
13 1994, at the Corona Regional Medical Center.

14 Q. At the time she performed the surgery,
15 respondent was not certified in foot and ankle surgery by
16 the American Board of Podiatric Surgery and did not possess
17 an ankle certificate.

18 R. Respondent followed Martha L. during her
19 recovery from the surgery through June 27, 1994.
20 Respondent's post-operative care of Martha L. consisted of
21 cast changes, splint changes, and bi-weekly ultrasound
22 treatments, and instructing Martha L. to do range-of-motion
23 exercises at home. Respondent did not perform nor refer
24 Martha L. out for physical therapy.

25 5. Respondent Dorothy E. Bauer, D.P.M., is subject to
26 disciplinary action for unprofessional conduct in that she
27 committed repeated negligent acts in her care and treatment of

1 patients Marjorie S. and Martha L., in violation of Code sections
2 2222, 2227, 2497 and 2234(c), as described in paragraph 4 above
3 which is incorporated herein by reference. Specifically:

4 A. Respondent did not record any physical
5 examination of patient Marjorie S. in the chart.

6 B. Respondent did not record any report of the
7 operation or procedure she performed on Marjorie S., did not
8 record any information on the type of anesthetic used, and
9 did not include the patient consent, if any was given, in
10 the chart.

11 C. Respondent did unnecessary surgery, repairing
12 the partially torn Achilles tendon without sufficient
13 medical indication, on Martha L.

14 D. Respondent performed the surgery on Martha L.
15 prematurely, within about 48 hours of the patient's injury,
16 and consequently failed to allow time for the injury to be
17 properly evaluated.

18 E. Respondent failed to employ proper diagnostic
19 techniques and procedures as to Martha L., and specifically
20 should have ordered and evaluated an M.R.I. to evaluate the
21 need for and extent of any surgery before performing that
22 surgery.

23 F. Respondent failed to provide reasonable post-
24 surgical care for Martha L. in that respondent failed to
25 vigorously rehabilitate the injury with physical therapy.
26 Respondent neither provided nor ordered physical therapy for
27 Martha L. after the surgery.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Dishonest or Corrupt Acts)

3 9. Respondent Dorothy E. Bauer, D.P.M., is subject to
4 disciplinary action for unprofessional conduct in that she
5 committed an act involving dishonesty or corruption which is
6 substantially related to the functions or duties of a doctor of
7 podiatric medicine in her care and treatment of patient Marjorie
8 S., in violation of Code sections 2222, 2227, 2497 and 2234(e),
9 as described in paragraph 4 above which is incorporated herein by
10 reference. Marjorie S. was not seen by respondent on April 11,
11 1995, yet respondent electronically submitted a bill to Medicare
12 for a visit on that date in the amount of \$57.01.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (General Unprofessional Conduct)

15 10. Respondent Dorothy E. Bauer, D.P.M., is subject to
16 disciplinary action for unprofessional conduct in that she
17 committed general unprofessional conduct in her care and
18 treatment of patients Marjorie S. and Martha L., in violation of
19 Code sections 2222, 2227, 2497 and 2234, as described in
20 paragraph 4 above which is incorporated herein by reference.
21 Specifically:

22 A. Respondent did not record any physical
23 examination of patient Marjorie S. in the chart.

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26 ///

27 ///

1 B. Respondent did not record any report of the
2 operation or procedure she performed on Marjorie S., did not
3 record any information on the type of anesthetic used, and
4 did not include the patient consent, if any was given, in
5 the chart.

6 C. Respondent did unnecessary surgery, repairing
7 the partially torn Achilles tendon without sufficient
8 medical indication, on Martha L.

9 D. Respondent performed the surgery on Martha L.
10 prematurely, within about 48 hours of the patient's injury,
11 and consequently failed to allow time for the injury to be
12 properly evaluated.

13 E. Respondent failed to employ proper diagnostic
14 techniques and procedures as to Martha L., and specifically
15 should have ordered and evaluated an M.R.I. to evaluate the
16 need for and extent of any surgery before performing that
17 surgery.

18 F. Respondent failed to provide reasonable post-
19 surgical care for Martha L. in that respondent failed to
20 vigorously rehabilitate the injury with physical therapy.
21 Respondent neither provided nor ordered physical therapy for
22 Martha L. after the surgery.

23 G. Although Marjorie S. was not seen by
24 respondent on April 11, 1995, respondent electronically
25 submitted a bill to Medicare for a visit on that date in the
26 amount of \$57.01.

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1 **PRAYER**

2 **WHEREFORE**, the complainant requests that a hearing be
3 held on the matters herein alleged, and that following the
4 hearing, the Board issue a decision:

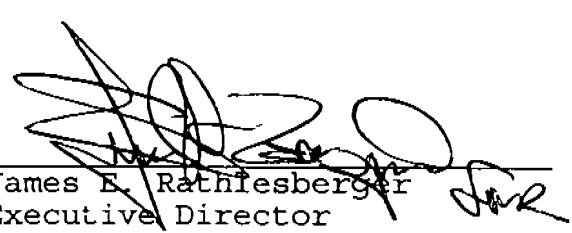
5 1. Revoking or suspending Podiatric Medical
6 Certificate No. E 3071, heretofore issued to respondent Dorothy
7 E. Bauer, D.P.M.;

8 2. Ordering respondent to pay to the Board the actual
9 and reasonable costs of the investigation and enforcement of this
10 case pursuant to Code section 2497.5(a);

11 3. If placed on probation, ordering respondent to pay
12 the costs of probation monitoring;

13 4. Taking such other and further action as the Board
14 deems necessary and proper.

15 DATED: August 20, 1997.

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17 
18 James E. Rathlesberger
19 Executive Director
20 Board of Podiatric Medicine
21 State of California

22 Complainant
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